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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 157.

THE STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET AL., APPELLANTS,

versus

THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

REPLY TO THE SUPPLEMENTAL BRIEF OF RESPONDENTS AND APPELLANTS.

It is a sufficient reply to that portion of Respondents' and Appellants' brief which contains in full the opinion of the Supreme Court of the State of Louisiana, in the case of the **Comptoir National vs. the Board of Assessors, 52 La. An., p. 1319,** to say:

1. That in that case the loans made by the Comptoir were advanced by notes which were retained in the City of New Orleans, and which, notwithstanding their non-nego-

tiability, the Court considered sufficiently representative of the credits due to the Comptoir to subject the same to taxation.

2. But even these non-negotiable notes were only subject to taxation, by reason of the fact found by the Court in that case, that the Comptoir was "engaged in a regular business, investing and reinvesting the moneys through an agent in this State."

As a matter of fact, the testimony which would seem to support this finding referred exclusively to the $20,000.00 fluctuating bank balance so employed by the Comptoir. Otherwise, the testimony was clear that no other funds were thus retained. Nor could they be so retained, for such retention would defeat the very purpose of the Comptoir's business, which was the selling and buying of exchange.

3. If, however, the statement of the fact by the Supreme Court of Louisiana is conclusive, then the answer to that finding is, that the business, during the year 1901, for which these taxes were assessed, was otherwise conducted; as *this record* shows clearly that, apart from the $20,000.00 of fluctuating balance, none of the funds of the Comptoir are kept in Louisiana for reinvestment.

In a former proceeding, Breton had stated that he *had occasionally* advanced money on City or State bonds. This statement was not understood by counsel to either refer to the business habitually done nor to the business being done at the time covered by said suit; for the entire examination and cross-examination of this witness, thereafter, referred exclusively to the warehouse receipts and bills of lading, showing money advanced on exports.

To determine this issue of fact, it is hardly necessary to go beyond the report of the Special Master. Counsel states, on page 24 of his supplemental brief, that the facts are correctly stated by the Master in his Report, on pages 47 and 48.

On page 47 of that report, the Master says: "The assessment complained of, of $175,000.00 for the year 1901, is on the credits accruing to it from the advances made by it in New Orleans, through its agents here, *on bills of lading and similar documents by way of collateral.*" (My italics).

It is conclusively established by the record that the sole purpose of the establishment of this agency in the City of New Orleans was to do an exchange business for the transaction of which complainant enjoys unusual facilities.

Incidentally, it loans money, but it loans this money solely for the purpose of making an exchange transaction.

The New Orleans agent daily telegraphs to the New York agent to sell the Comptoir's exchange in that market upon those foreign centers offering the largest profit.

The New Orleans agent does this, not for the purpose of removing the funds from the City of New Orleans, but because New York is the exchange market of this country.

When a New Orleans merchant desires to receive the value of a consignment of cotton or grain which is being shipped abroad, he applies to the Comptoir's agent in New Orleans for a loan approximating the price which he desires to receive, and gives to the Comptoir's agent in New Orleans his draft drawn upon the foreign consignee in Liverpool or elsewhere, and attaches thereto a foreign bill of lading.

These drafts are not, as counsel assert, retained in the City of New Orleans. It is evident that, in order to collect the same, they must at once be forwarded to the foreign city where they are made payable. Upon receiving these drafts and bills of lading, the Comptoir's New Orleans agent usually gives to the borrower a letter of credit upon some foreign market. This letter of credit is found at page 38 of the transcript.

The borrower then draws his draft, with letter of credit annexed, and sells his draft to a New Orleans bank.

In other cases, the Comptoir draws its draft or domestic bill of exchange on its agents in New York, and either gives that to the borrower to sell, or itself sells the same to a New Orleans bank and pays over the proceeds to the borrower.

In all of these cases it is self-evident that no money of the Comptoir is brought to New Orleans for the purpose of these loans, except such fluctuating balance as may, from time to time, result from payment of margins or the adjustment of differences between the parties. This balance has been determined by the Courts to be $20,000.00, which decision has been acquiesced in by the City and State during the last three years.

Referring to counsel's brief, at page 21, arguing that all the moneys of the Comptoir herein sought to be taxed are retained in the City of New Orleans for investment and reinvestment, the references to Mr. Breton's testimony, at pages 23 and 27, in no manner bear out this assertion. Breton simply states that a continual renewal of the exchange dealings would amount to a large sum of money.

The turning of the money over again in exchange deal-

ings did not mean, and was not intended to mean, that the funds were retained in the City of New Orleans; for it is repeatedly and constantly stated that any funds which were ever received in New Orleans were immediately reinvested in exchange, outside of this balance of $20,000.00. If the New Orleans Agency had retained these large sums of money in New Orleans for investment and reinvestment, how could the Courts have reached the conclusion that the maximum amount of such sums was $20,000.00?

Further, I beg to submit to the Court that counsel for respondent neither in their original, nor their supplemental briefs, have attempted to reply to the argument of complainant, based upon the decision of **Liverpool vs. Assessors, 51 La. An. 1028,** and cited on page 45 of complainant's original brief.

Even if it could be assumed that moneys borrowed by the Comptoir for the purpose of these exchange transactions and advances, was money belonging to it, and that it was not a debtor for a sum thus borrowed by it, it is clearly established that the obligations arising from these transactions are remitted abroad for collection, and that nothing remains in Louisiana except paid checks which are given by the borrower solely as a memorandum for the guidance of the Comptoir's book-keeper, and to certify positively the amount of the drafts no longer within reach.

These cheques are not obligations. They are never returned to the drawers. They are simply book-keeping memoranda. If it could be held that the Comptoir was not a debtor or a borrower of the money which it loans, but that from its own funds, actually within the State, it loane dthese sums of money, but received therefor no writ-

ten obligation and no tangible evidence of the debt, under this decision of the Louisiana Supreme Court, a tax could not be levied upon such loans. That Court holds that such taxation would be in violation of the Constitution of the State of Louisiana of 1879, which is identical in this respect with the Constitution of 1898.

But I submit that, on the facts as they exist, and as they are found by the Master, the business of this corporation in Louisiana is that of exchange; that it loans money as an incident to that business, and procures the money which it thus loans exclusively by the use of its foreign credit in the markets of the world.

It gives the people of Louisiana and the adjacent States the benefit, in cheaper interest, of its exchange transactions. It is a necessary adjunct to the export business of New Orleans; and for the State of Louisiana and the City of New Orleans to levy such a tax as is herein sought to be enforced, would be equivalent to its levying a tax upon the exchange *arbitrage* of the commercial world and, beyond that, would be the levying of a tax upon the export trade of the City of New Orleans.

Respectfully submitted,

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Solicitor of Complainant.